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**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

FEDERAL TRADE COMMISSION,

Plaintiff,

v.

MICROSOFT CORP.,

and

ACTIVISION BLIZZARD, INC.,

Defendants.

Case No. 3:23-cv-2880

**NON-PARTY SONY
INTERACTIVE
ENTERTAINMENT LLC'S
STATEMENT IN SUPPORT OF
SEALING CERTAIN
CONFIDENTIAL BUSINESS
MATERIAL**

I. INTRODUCTION

Non-Party Sony Interactive Entertainment LLC (“SIE”) produced certain confidential business material in response to a civil investigative demand and subpoenas in the underlying FTC administrative proceeding, *In re Microsoft/Activision Blizzard*, No. 9412 (F.T.C.) (“FTC Action”). *See* ECF 112-2. This confidential SIE information has subsequently been incorporated in various filings by Microsoft Corp. (“Microsoft”) and Activision Blizzard, Inc. (“Activision” and, together with Microsoft, “Defendants”) and the Federal Trade Commission (“FTC”) (collectively, the “Parties”).

In particular, as relevant to this Statement, the FTC incorporated this material into its Initial Proposed Findings of Fact and Conclusions of Law (ECF 175) (“FTC’s Findings”). The FTC then filed a corresponding Administrative Motion to Consider Whether Another Party’s Material Should Be Sealed (ECF 336). Pursuant to Civil Local Rule 79-5(f)(3), Non-Party SIE requests that this Court seal its confidential information identified below.

The information that SIE seeks to maintain under seal contains competitively sensitive non-public information that would injure SIE if made publicly available. The table below describes the SIE highly confidential material found in the FTC’s Findings and the specific bases supporting sealing of the information. *See* Civ. L.R. 79-5(c). These sealing requests reflect SIE’s good faith effort to seek the sealing only of information that is confidential, commercially or competitively-sensitive, and cannot be protected from public disclosure through less restrictive means.

Category of Information	Section of Document to Maintain Under Seal (Paragraph) Pages:Lines
FTC's Findings (ECF 175)	
Non-public SIE data, analysis, and survey results relating to SIE product strategy and platform users' behavior on SIE's platform, including user engagement, gameplay, spend, likelihood of switching, or potential competitive impacts of Microsoft's proposed acquisition of Activision	(76) 10:4-7 (240) 34:14-17 (119) 15:21 (330) 50:8-11 (119) 15:22-23 (335) 51:4-7 (210) 28:26-28 (336) 51:8-10 (211) 29:1-3 (356) 55:28-56:2 (212) 29:4-5 (470) 80:19 (213) 29:6-7 (475) 81:14-16 (214) 29:8-12 (479) 82:3-5 (236) 33:12-15 (481) 82:10-15 (239) 34:14-17 (488) 83:18-20
Non-public information about SIE's approach to contract negotiations with third party partners and discussions of particular contract terms with particular partners	(544) 92:16-19 (545) 92:20-28 (546) 93:1-7 (547) 93:8-9 (548) 93:10-12 (549) 93:13-14
Non-public information on the nature and scope of SIE's technical collaboration with particular publishers	(382) 61:21-25 (383) 61:26-27 (476) 81:17-21
Non-public information about SIE's business strategies, competitive business plans, future investment plans, console and product development	(94) 12:21-23 (224) 30:25-27 (243) 34:27-35:3 (264) 39:1-4 (265) 39:5-8

1 plans, product roadmaps, innovation	
2 plans	
3 Non-public SIE business analysis	(89) 11:26
4 regarding competitors' and commercial	(89-90) 11:27-12:1
5 partners' behavior and products	

6 **II. THERE ARE COMPELLING REASONS TO SEAL SIE'S**

7 **CONFIDENTIAL BUSINESS INFORMATION**

8 Although the public enjoys a general right to inspect and copy public records,
9 including judicial records, "access to judicial records is not absolute." *Kamakana v.*
10 *City & Cnty. of Honolulu*, 447 F.3d 1172, 1178 (9th Cir. 2006). The presumption in
11 favor of access to judicial records may be overcome by "compelling reasons" that
12 justify sealing them, such as the need to prevent court filings from serving as "sources
13 of business information that might harm a litigant's competitive standing." *Ctr. for*
14 *Auto Safety v. Chrysler Grp., LLC*, 809 F.3d 1092, 1097 (9th Cir. 2016) (quoting
15 *Nixon v. Warner Commc 'ns, Inc.*, 435 U.S. 589, 598-99 (1978)). Courts have broad
16 discretion to prevent disclosure of "many types of information, including, but not
17 limited to, trade secrets or other confidential research, development, or commercial
18 information." *Phillips ex rel. Estates of Byrd v. Gen. Motors Corp.*, 307 F.3d 1206,
19 1211 (9th Cir. 2002). Specifically, if revealing "confidential business material,
20 marketing strategies, [and] product development plans could result in improper use
21 by business competitors seeking to replicate [the company's] business practices and
22 circumvent the time and resources necessary in developing their own practices and
23 strategies," a court may seal the materials in question. *Roley v. Google LLC*, No. 18-
24 cv-07537-BLF, 2020 WL 13517498, at *1 (N.D. Cal. Apr. 28, 2020) (quoting
25 *Algarin v. Maybelline, LLC*, No. 12CV3000 AJB DHB, 2014 WL 690410, at *3 (S.D.
26 Cal. Feb. 21, 2014)).

27 Non-parties receive special deference when these issues are considered. *See,*
28 *e.g., United States v. Bazaarvoice, Inc.*, No. 13-cv-00133-WHO, 2014 WL

1 11297188, at *1 (N.D. Cal. Jan. 21, 2014) (granting motion to seal third-party trial
 2 exhibits, noting that disclosure would “chill investigations in the future where third
 3 party documents are essential”).

4 Here, Non-Party SIE seeks sealing of limited non-public information
 5 containing SIE’s highly confidential analyses and business strategy information
 6 related to its consoles, subscription services, and cloud gaming businesses. *See* Ex.
 7 A (Decl. of C. Svensson).¹ In particular, the information that SIE seeks to protect
 8 includes:

- 9 • Non-public SIE data, analysis, and survey results relating to SIE product
 10 strategy and platform users’ behavior on SIE’s platform, including user
 11 engagement, gameplay, spend, likelihood of switching, or potential
 12 competitive impacts of Microsoft’s proposed acquisition of Activision;
- 13 • Non-public information about SIE’s approach to contract negotiations with
 14 third party partners and discussions of particular contract terms with
 15 particular partners;
- 16 • Non-public information on the nature and scope of SIE’s technical
 17 collaboration with particular publishers;
- 18 • Non-public information about SIE’s business strategies, competitive business
 19 plans, future investment plans, console and product development plans,
 20 product roadmaps, innovation plans; and
- 21 • Non-public SIE business analysis regarding competitors’ and commercial
 22 partners’ behavior and products. *See id.* ¶ 3.

23 SIE uses this information to operate its business and shape its future strategy.
 24 As explained in Mr. Svensson’s declaration, if these business secrets were made
 25

26 ¹ The Declaration of Christian Svensson was submitted at ECF 172-1 in conjunction with Non-
 27 Party SIE’s Administrative Motion for Sealing and In Camera Treatment (ECF 172). The
 28 competitively sensitive issues in today’s request are the same as those addressed in the previous
 Declaration, as explained in the chart above, and Mr. Svensson’s Declaration is resubmitted here
 as Exhibit A.

1 available to the public, SIE's competitors could use these secrets to inform their own
 2 strategies to gain an unfair advantage in competing with SIE. *See id.* ¶¶ 4-8. Business
 3 partners could likewise gain an unfair advantage in their relationships with SIE by
 4 understanding SIE's strategic objectives, negotiation tactics, and relationships with
 5 other business partners. *See id.* These concerns are particularly severe here, as the
 6 information is current, which makes it more valuable to others because it is
 7 actionable. *See id.* ¶ 8.

8 In short, the information should be sealed because disclosure would undermine
 9 SIE's business and give competitors and business partners an unfair advantage. *See*
 10 Ex. A (Decl. of C. Svensson); *see also Synchronoss Techs., Inc. v. Dropbox Inc.*, No.
 11 16-cv-00119-HSG, 2018 WL 6002319, at *1 (N.D. Cal. Nov. 15, 2018) (noting that
 12 courts have sealed confidential business information when it "prevent[ed]
 13 competitors from gaining insight into the parties' business model and strategy")
 14 (citation omitted); *Bauer Bros. LLC v. Nike, Inc.*, No. 09cv500-WQH-BGS, 2012
 15 WL 1899838, at *2 (S.D. Cal. May 24, 2012) (concluding that "public disclosure of
 16 Nike's confidential business materials . . . could result in improper use by business
 17 competitors seeking to replicate Nike's business practices and circumvent the
 18 considerable time and resources necessary in product and marketing development").

19 **III. THE COMPELLING REASONS TO SEAL OUTWEIGH ANY** 20 **PUBLIC INTEREST IN THE REDACTED MATERIAL**

21 SIE's request for sealing is the result of its good faith effort to seek the sealing
 22 only of information that is confidential, commercially or competitively-sensitive, and
 23 cannot be protected from public disclosure through less restrictive means. Any
 24 public interest in disclosing this information is outweighed by the prejudice that will
 25 result to SIE, a non-party, if no protection is granted. *See Bazaarvoice, Inc.*, 2014
 26 WL 11297188, at *1 (noting importance of protecting third parties).

27 **IV. CONCLUSION**

1 For the foregoing reasons, SIE respectfully requests that the Court grant the
2 FTC's Administrative Motion to Consider Whether Another Party's Material Should
3 Be Sealed (ECF 336) and maintain under seal SIE's confidential information listed
4 in the chart above.

5 Dated: August 7, 2023

6 Respectfully submitted,

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8 HAMILTON LLP

9 /s/ Elsbeth Bennett

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